

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

)	
Illinois Commerce Commission)	
On Its Own Motion)	
)	
vs.)	
)	
Illinois Power Company)	
)	Docket No. 01-0701
Reconciliation of revenues collected)	
under gas adjustment charges with)	
actual costs prudently incurred.)	
)	

ILLINOIS POWER COMPANY’S REPLY BRIEF

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Pursuant to the schedule adopted by the Administrative Law Judge and § 200.800 of the Commission’s Rules of Practice, Illinois Power Company (“Illinois Power,” “Company” or “IP”) hereby submits its Reply Brief in the above-referenced docket.

INTRODUCTION & SUMMARY

This case should be an easy one: IP proved that its 2001 gas purchases and practices were prudent. That should end the matter. Staff however chooses to rely on the Commission’s Order in IP’s 2000 PGA case to determine the outcome of this 2001 case, rather than examine the new facts known in 2001 on the swing contract. The reason is obvious: the *undisputed* facts in *this* record undeniably show that no disallowance is appropriate on the swing contract. In any event, IP’s conclusions are supported by the Appellate Court’s decision regarding IP’s 2000

PGA case.¹ Although it only addresses the issue of the retirement of the Freeburg Propane Plant (“FPP”) (on which now there is no doubt as to the correct disposition for the present case), the decision is instructive on all of the issues raised by Staff in this case.

With respect to the reduction of the peak day expected deliverability at IP’s Shanghai storage field (“Shanghai”), Staff continues to raise the various issues it has throughout this case but without realizing that Staff’s narrow view of the evidence leads it to the wrong conclusion on every single issue it raises. In attempting to make a case where none exists, Staff goes so far as to raise a new issue (reservoir modeling) and launch attacks on IP’s witnesses (without acknowledging that IP presented the only true expert in this case, who flatly disagrees with Staff’s unfounded conclusions).

Staff’s Brief is “full of sound and fury, signifying nothing.”² Rather than face the facts and realize that the real world does not work as simply and predictably as Staff asserts, Staff chooses to issue forth with such gross exaggerations as “indictment” and “a farce and a disservice.” With respect to each of the issues Staff raises, we find it difficult to understand why Staff seems so insistent on presenting only some of the facts rather than presenting a complete picture to the Commission and letting the Commission make a decision based on a full understanding of the evidence. Nonetheless, we first demonstrate why Staff is just plain wrong and then, where appropriate, paraphrase Staff’s own words to sum up what should be the final outcome of this case.

¹ *Illinois Power Co. v. ICC*, 339 Ill.App.3d 425, 790 N.E.2d 377 (5th Dist. App. Ct., 2003) (“2000 Appellate Decision”).

ARGUMENT

I. The Standard for Prudence Supports Illinois Power's Positions.

With respect to the general rule on prudence, both parties agree (although Staff chose to quote an incomplete rendition of it in its Brief, Staff Br. at 2-3). The Commission has set forth the standard for prudence in cases such as this one as follows:

Prudence is that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time the decisions had to be made. In determining whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. Hindsight review is impermissible.

Imprudence cannot be sustained by substituting one's judgment for that of another. The prudence standard recognizes that reasonable persons can have honest differences of opinion without the one or the other necessarily being "imprudent."

Illinois Commerce Commission v. Commonwealth Edison Co., Docket No. 84-0395 at 17 (October 7, 1987) (quoting Pennsylvania Public Utilities Commission case).

Staff's citation to an IP case (Docket No. 88-0142, *rev'd & remanded*, *Illinois Power Co. v. ICC*, 245 Ill.App.3d 367, 612 N.E.2d 925 (3d Dist. App. Ct. 1993))³ is curious because, in that case, the Appellate Court reversed the Commission's findings of imprudence because the Court found the Commission improperly applied the standard for determining prudence. *See Illinois Power*, 245 Ill.App.3d at 376, 612 N.E.2d at 932. Staff's arguments on Shanghai suffer from the same defect: they rely on later-known facts to determine, for example, that certain data pointed

² *Macbeth*, Act V, Scene V.

³ Staff actually cites the Commission's Order and the Appellate Court's decision without indicating that the Court reversed the Commission or that the two citations are otherwise linked in any way. Staff Br. at 2-3.

to a metering error, when in fact at the time the data were collected and analyzed, they also indicated that other actions IP was taking at Shanghai were working.

Elsewhere, Staff asserts that “IP has the responsibility to its customers to provide least cost utility service.” Staff Br. at 24. Staff makes this assertion without any citation to any law, rule or Order to that effect, because in fact there is no such rule. This case is governed solely by § 9-220(a) of the PUA and § 9-220(a) requires “prudence,” not “least cost service.” Furthermore, a “least cost service” standard is at odds with such activities as hedging programs (which, by their very nature, are not necessarily least cost, especially in mild winters).

In any event, Staff fails to recognize that the prudence standard is even more instructive with respect to other issues presented by this case, despite acknowledging it on cross-examination, Tr. 95,⁴ and quoting from the Commission’s Order in Docket No. 84-0395 in its testimony. Staff Ex. 2.00 at 3-4. The Commission has recognized that, when humans are involved, some errors are to be expected, especially “under difficult circumstances.” *ICC v. Commonwealth Edison*, at 19. *See also Business & Professional People for the Public Interest v. ICC*, 279 Ill.App.3d 824, 833, 665 N.E.2d 553, 559 (1st Dist. App. Ct. 1996) (“a small amount of human error is an unavoidable cost of any human endeavor”). Perfection is thus clearly not the standard. Indeed, no person (reasonable or otherwise) could ever expect to be perfect nor should one be held to such a standard.

The 2000 *Appellate Decision* begins with the standard language regarding prudence. “Prudence is that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be

⁴ All references to Exhibits are in the form “[Party] Ex. [No]. at [p.]” unless otherwise noted. Also, references to the transcripts are in the form “Tr. [p.]” unless otherwise noted.

made. When a court considers whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. Hindsight review is impermissible.” 790 N.E.2d at 379 (internal quotations and citations omitted). Later, the Court also points out “that the prudence standard recognizes that reasonable persons can have honest differences of opinion without one or the other necessarily being ‘imprudent.’” *Id.* at 384. The Court goes on, however, to note points that are particularly relevant to the present case:

In fact, section 9-220(a) of the Act does not set forth any specific type of analysis that a utility must perform to show that its costs are prudent. We note that the Commission, in its order, pointed to no statutory provision or regulation of the Commission that required a [specific type of] analysis to establish prudence in these circumstances. Additionally, the Commission did not point to any prior decisions or any other sources of a “standard of care” that should have led a reasonable person to conclude that a [specific type of] analysis was a necessary component of prudent decision-making in deciding whether [to take the action it did]. Although “prudence” is a determination within the Commission’s discretion, the Illinois Supreme Court has stated, “[N]o matter how much discretion the Commission is afforded ***, its decisions are entitled to less deference when it drastically departs from past practice.”

Id. at 388 (citations omitted). Finally, the 2000 *Appellate Decision* recognizes that least cost is not the dispositive standard. “The record shows that there are safer, more reliable, and more convenient alternatives for providing the same service to customers, *even though it was estimated by the Commission to be more expensive.*” *Id.* at 390-91 (emphasis added).

Once the evidence in this docket is viewed against the proper standard, this case becomes an easy one: Illinois Power’s actions in the 2001 reconciliation period were prudent. We turn now to each of the specific disallowances proposed by Staff in the remaining sections of this Reply Brief (ordered to mirror the order used in Staff’s Brief).

II. IP’s Decision to Retire the Freeburg Propane Plant for the Years 2001 and Forward was Prudent.

At this point, all parties agree that the *2000 Appellate Decision* resolves this issue in IP's favor as to the current case. *See* Tr. 5 (Reopening); Staff Ex. 6.00 at 5-6. Staff's schedules on Reopening properly revise the original disallowance proposed by Staff on this issue (although IP still opposes other disallowances proposed by Staff). *See* Staff Ex. 6.00 (Schedules 6.01 & 6.02). Thus, there is no longer any contested issue with regard to FPP.

III. There Is No Basis to Disallow the Cost of the One Swing Contract at Issue in This Case.

In its Order for IP's 2000 PGA reconciliation, the Commission found "that IP's practice of awarding swing firm supply contracts for the 2000-2001 winter season on the sole basis of lowest reservation costs was imprudent." 2000 PGA Order at 34. The Commission then adopted Staff's recommended disallowance of \$3,000 that covered two contracts, one with DMT and one with another party (for confidentiality reasons, referred to here as "Contract 1"). *Id.*; *see also id.* at 31 & 33. For 2001, Staff proposes a disallowance on Contract 1 only. Staff Exs. 2.00 at 6-7 & 4.00 at 2-6. IP has chosen not to re-litigate whether its practice of looking only at reservation costs was prudent.⁵ Using the test adopted by the Commission in the 2000 PGA Order,⁶ no disallowance on this issue is warranted, Staff's statements to the contrary notwithstanding. Staff

⁵ Nonetheless, the *2000 Appellate Decision* is instructive on how this issue should have been resolved from the outset because Staff's new methodology was such that "there would have been no reason, based on past experience, that a 'reasonable person' should have concluded that [assuming a usage level for each contract] was necessary as a part of prudent decision-making." 790 N.E.2d at 388. Staff failed to point out what relevant differences in circumstances existed between the contracts awarded in prior years and those awarded in 2000. *See id.* at 387. Even accepting the flaws in outcome in the 2000 case, IP's position should prevail for this reconciliation period.

⁶ Throughout this section of its Brief (especially, at 8), Staff takes pains to distance itself from the test it proposed in the 2000 PGA case (with Staff presenting the same witness on this topic in both the 2000 and the 2001 reconciliation cases) and the Commission adopted in that case. Although it never states why it is not willing to take credit for its handiwork, perhaps its new position is based on a realization that its test actually causes customers to pay more than they would otherwise under the practice Staff criticized in the 2000 PGA case, as IP stressed in that case. *See* 2000 PGA Order at 32-33. In any event, whose test it is is irrelevant to the fact that, using Staff's test, Contract 1 would have been

Br. at 6-9. Staff wishes to tie this Commission's hands in ways that are not required by law or sound policy. In particular, although Staff recognizes that IP is arguing that two errors were made on this issue in the 2000 PGA Order (and does not deny that these are real errors), Staff recommends that the Commission not only ignore those errors but, in one case, compound the error by hiding behind the 2000 PGA Order and ignoring the evidence in this case. This is just one example of Staff presenting only some of the facts rather than presenting a complete picture to the Commission and letting the Commission make a decision based on a full understanding of the evidence.

First, the uncontradicted evidence on this issue is that Contract 1 would have been selected using the criteria adopted by the Commission in the 2000 PGA Order. IP Exs. 2.1 at 5-6 & Confidential 2.3 (revised). Staff did not deny this in its Brief or at any point in its evidence. Indeed, Mr. Lounsberry acknowledged that IP's calculation was error free. Tr. 137. Rather, Staff states that because a disallowance was ordered in the prior case (albeit in error), a disallowance is proper in this case. Staff Br. at 7-8. Nowhere, however, does Staff show how it is proper to enter a disallowance in this reconciliation period (for which the uncontradicted evidence shows that the contract should have been selected) based on an erroneous prior decision. Simply put, the fact that the contract would have been selected undercuts any possible argument that there were any imprudent gas costs associated with the current reconciliation period.

Second, the disallowance in the 2000 PGA Order covered the DMT contract. *See* 2000 PGA Order at 31 & 33. That contract (as is true of most, if not all, of IP's swing contracts) covered a winter season, with that season spanning two reconciliation periods. IP Ex. 2.1 at 3.

selected and no disallowance would have been made on that contract for 2000 and none should be in

The 2000 case focused solely on the 2000 costs, but had one looked at the entire contract (spanning both periods), the result of entering into the DMT contract was a net savings to PGA customers. *Id.* & IP Ex. 2.2. Staff agrees with these facts: “I agree an adjustment was made in Docket No. 00-0714 for additional cost that IP incurred as a result of signing this contract for the period November through December 2000. I also agree that IP’s calculation shows that when considering the full term of the contract, *IP did not incur any additional gas costs.*” Staff Ex. 4.00 at 4 (emphasis added). Although it is undeniable that IP has had prudently incurred costs disallowed, Staff refuses to find a solution.

Instead, Staff stands by a contradictory argument that essentially means IP always loses in these situations: on the one hand, Staff says that disallowance calculations are based solely on the reconciliation period at issue, yet, on the other hand, Staff says that IP should have raised the benefit (which arose from the 2001 part of the DMT contract) in the prior year. Staff Br. at 8-9. Of course, to do the latter is to contradict the former. Staff’s protestations notwithstanding, logic should prevail—or, as Justice Lewis of the Fifth District Appellate Court wrote in voting to overturn a Commission disallowance in a PGA reconciliation case, “I do not want to get carried away, but I agree with the majority that the law should occasionally make sense.” *Monarch Gas Co. v. ICC*, 261 Ill.App.3d 94, 101, 633 N.E.2d 1260, 1266 (5th Dist. App. Ct., 1994). The fact is this contract should not have been disallowed and IP should now receive a credit for that improper disallowance. At a minimum, IP should be able to use the benefit customers received (on a contract for which IP was previously improperly penalized) as an offset to the (unwarranted) disallowance Staff proposes in this proceeding.

2001.

Furthermore, Staff's attempt to split contracts apart will likely lead to inefficient behavior by gas utilities that generally purchase winter season contracts. By picking apart what is in fact a single decision, Staff is analyzing only part of the picture without seeing whether (over the entire period of the contract) entering into that contract was the prudent decision. In an effort to avoid disallowances proposed by Staff, utilities will begin doing the same even if the sum of the two subparts ends up costing more. The Commission should not encourage Staff to argue for such inefficiencies or utilities to take such actions.

In sum, no disallowance is warranted on Contract 1 as it would have been selected under the Commission's criteria adopted in the 2000 PGA Order. In addition, IP should receive a credit (of \$1,000) for the amount that was previously disallowed under the DMT contract because that contract in fact provided customers with a net benefit over the entire 2000-2001 winter season (and thus no disallowance should have been ordered in the prior PGA case). At a minimum, if the Commission finds any disallowance, IP should receive an offsetting credit.

IV. No Disallowance Is Justified for the Reduction of Peak Day Expected Deliverability at Shanghai Storage Field Either Due to IP's Actions at that Storage Field or Due to Its Actions at Storage Fields Generally: IP's Actions on Both Accounts Were Prudent.

The next disallowance proposed by Staff relates to Shanghai. Staff Br. at 9-31. For the year 2001, IP reduced the expected peak day deliverability at Shanghai by 25,000 Mcf/day (from 80,000 Mcf/day to 55,000 Mcf/day). Neither Staff nor IP disagrees with this fact. Rather, the parties sharply disagree with whether IP's subsequent purchase of Firm Transport to ensure reliable supply to its system as a result of this reduction was prudent. The facts demonstrate that IP was prudent:

- The reduction in peak day expected deliverability at Shanghai was due to the field's actual performance. IP Ex. 3.3 at 5-6.

-- The only expert in storage field operations testifying in this case stated that IP exceeds what is done by most operators of aquifer storage fields elsewhere. IP Ex. 5.0 at 17-18.

-- Data collected by Staff shows that IP is not an unacceptable outlier compared to other gas utilities in Illinois. IP Ex. 3.10.

This evidence meets the proper standard for prudence recently reiterated by the Appellate Court: IP's solution was, to use the phrase employed in the *2000 Appellate Decision* (790 N.E.2d at 391), a safer, more reliable and more convenient method for providing the same service to customers, even if, according to Staff, it might have been more expensive. Nonetheless, Staff alleges that numerous technical and other reasons purportedly support its claim that IP was imprudent with respect to its operations at Shanghai. Staff Br. at 10-24. Furthermore, in implicit recognition that the points it raises concerning Shanghai's operations are insufficient to show imprudence or to warrant a disallowance, Staff also brings in issues and innuendos relating to other IP storage fields and IP's storage operations generally. *Id.* at 24-31. However, whether the Commission looks at the evidence as a total package or breaks it down into discrete pieces, the facts demonstrate that IP acted prudently and no disallowance is warranted. Fundamentally, the reduction in deliverability of the Shanghai storage field must be viewed as prudent because, as even Staff does not disagree, the reduction was due to the field's actual recent performance. Staff Ex. 2.00 at 9. Therefore, to not have made the reduction would have put IP's firm customers at risk by causing IP to have less supply capability than it needed to meet expected winter peak gas load requirements. IP Ex. 3.3 at 5-6. IP took a conservative approach to ensure its ability to meet its service obligations.

With regard to both Shanghai and IP's operations more generally, one of Staff's fundamental flaws is considering various items in isolation rather than considering them collectively in analyzing whether IP's actions were prudent (a failing condemned in the *2000 Appellate Decision*, 790 N.E.2d at 388, with respect to the analysis of the FPP retirement). For example, Staff focuses on hysteresis graphs but fails to give due weight to all of the other tools IP was using. Similarly, Staff focuses on a single error in one analysis relating to another storage field rather than recognizing how relatively error-free IP's actions were with regard to that one incident, especially when one looks no further than Staff's own analysis in this case.

Shanghai specific issues. Shanghai is an aquifer storage field, meaning that gas is injected into a geologic formation that initially contains water and the water in the pore space is displaced by the gas. IP Ex. 5.0 at 3.

With regard to Shanghai itself, Staff first raises an issue with storage field declines generally and states that, because IP did not perform *work directly on the wells* at Shanghai since the early 1990's, this had a negative impact on the field. Staff Br. at 10-11. Staff fails to realize that not all the work at a field will be directly on the wells; other aspects of the field must also be addressed and IP has been actively addressing all of these aspects in its ongoing effort to maintain all of its fields. Mr. Shipp described IP's panoply of projects, not just at Shanghai but at other storage fields as well. *See, e.g.*, IP Ex. 3.3 at 6-8. More importantly, Staff fails to recognize that its own testimony is at odds with its evidence: "IP had Halliburton perform chemical treatments on three wells *in 2001*," Staff Ex. 2.00 at 20 (emphasis added), long after the date Staff asserts in its Brief (at 12) we performed no further work on the wells.

Furthermore, Staff draws the unsupported conclusion that failure to perform reperforations on a specific well would cause a decline in deliverability: Staff fails to recognize

the other types of work that can be done at a given well, such as well treatments. *See* IP Ex. 3.3 at 6-8 (listing various types of work) & Revised IP Ex. 3.4 (listing storage field capital projects from 1993-2001). Thus, Staff's simplistic attempt to multiply the number of years between re-perforations by an estimated decline rate (Staff Br. at 11) ignores the real world and the many real steps IP has (and continues to take) at Shanghai.

Next, Staff raises the prior leak at Shanghai. Staff Br. at 11-12. In doing so, Staff does not reach any conclusions in this portion of its Brief. Rather, it notes that IP would have expected growth in gas contained in the reservoir after the leak was repaired and additional gas to replace the lost (leaked) gas was injected. *Id.* However, in its next section, Staff attempts to tie this history to the fact that IP missed "a genuine opportunity" by not acting on the fact that certain observation wells at Shanghai did not go to gas for certain years. Staff Br. 12-13.

No opportunity was missed by IP. Rather, Staff again demonstrates its lack of real world knowledge. In fact, the observation was consistent with what IP believed would be happening at that time given the slower injection to keep the bubble from migrating. *See* IP Ex. 5.2 at 6-7 & IP Ex. 3.6 at 12-15. It is difficult to understand why Staff would investigate (and thereafter recommend) a disallowance based on something that was entirely consistent with the expected outcome of IP's actions.

As we explained in our Opening Brief (at 21), IP detected gas at one or more monitoring wells at Shanghai in every year that the metering error occurred. IP Ex. 3.3 at 13. The fact that, in certain years, monitoring wells did not "go to gas" (indicating a higher concentration of gas was present, *id.*) was taken as a positive sign because, as IP expert Mr. Hower indicated, this was consistent with other actions IP had taken at the field and would indicate that these actions had been successful. IP Ex. 5.2 at 6-7. *See also* IP Ex. 3.6 at 12-15. Indeed, Staff recognized this

very point in its testimony, but has chosen to ignore it in its Brief: “*Monitor wells* are wells located at or near the edge of the gas bubble within a storage field and *are used to verify that the gas bubble associated with the storage field has not moved or migrated from the storage formation.*” Staff Ex. 2.00 at 17 (emphasis added).

Aquifer storage fields are much more complex than Staff would have this Commission believe and, in the real world, data may indicate that different possibilities (not just the one that proves to be correct later in hindsight) are likely. *See generally* IP Ex. 3.6. Here, Staff narrowly focuses on the after-the-fact reality but refuses to use the proper standard for prudence, which looks at what IP knew at the time—and what IP knew was equally consistent with the metering error as with it having been successful in other actions it was taking to improve the field.⁷ The reality is that IP did not miss any opportunity *when gauged by the facts it knew at the time.*

Next, Staff raises the metering error at Shanghai. Staff Br. at 13-15. In particular, Staff alleges that the delay in replacing the misaccounted for gas somehow caused the problems at Shanghai, relying in part on an internal IP report. *Id.* Staff attempts to twist what the report says into a contradiction of IP’s position. *Id.* at 14. The report (as even Staff notes, *id.*) merely indicates that certain events *may have* adversely impacted the field. Indeed, the Summary of the

⁷ As Mr. Hower noted:

Mr. Lounsberry’s conclusion that, because certain observation wells did not go to gas, this indicates a problem with the storage reservoir is not correct. In fact, it could mean just the opposite. If some observation wells do not go to gas, it may likely indicate that IP is doing a better job of managing their gas bubble growth and injection program and preventing gas from migrating down structure. Observation wells going to gas would be the first indication of gas migrating rapidly down the structure and a potential problem. Since IP had conducted the well re-perforation work and noted the resulting increase in gas saturation, the logical conclusion would be that the program had been successful. And the logical result would be to take no action upon the observation that certain wells had not gone to gas.

IP Ex. 5.2 at 6-7.

Report lists 5 items that “could” have contributed to a decline in deliverability. *See* IP Ex. 3.8, Attachment 1 at p.1. Nowhere in the conclusion of the Report (on that same page) are there any definitive statements that any particular event did in fact adversely impact the field. *Id.* And, part of the Summary goes on to address an issue that should have potentially offset the possible issues: IP’s well reperfusions. *Id.* Finally, on further study by an expert (Mr. Hower), the record is clear that in his professional judgment, “[a] delay in replacing this gas would be of no consequence.” IP Ex. 5.0 at 22.

Staff’s next issue is with sanding at one of IP’s wells. Staff Br. at 15-18. In raising this issue, Staff continues to attempt to link the reduced inventory to the sanding problem. *Id.* at 16. But, Mr. Hower was clear that there was no theoretical or practical reason for such a linkage given the position of the well that had a sanding problem in relation to the Shanghai field structure. *See* IP Ex. 5.2 at 10. Using Staff’s logic, years ago many of the wells would have sanded out as a result of the lower inventory and the well casing leak (when inventory was lower as well). Yet, the fact remains that no such events occurred because, as Mr. Hower explains, the lower inventory does not cause this type of problem with the wells. IP Ex. 5.0 at 22-23. Indeed, Mr. Hower was “not aware of any theoretical basis or field examples where a reduced gas inventory was identified as the cause of sand production in storage wells.” IP Ex. 5.0 at 22. In fact, the reduced inventory “would actually tend to prevent sand production problems rather than cause them.” *Id.* at 23. The reality is that:

... Mr. Lounsberry’s logic is flawed. The bottom line to the sanding issue is that in a gas reservoir operated over 33 years, one would expect certain production issues such as sand production to arise. ... The fact that this phenomenon only happened in one well in 33 years is further evidence of IP’s prudent operation and management of the Shanghai field. In my opinion, the single incident of well sanding had nothing to do with the reduced level of gas inventory due to the metering error.

IP Ex. 5.2 at 10. Thus, Staff's attempts (Staff Br. at 18) to turn Mr. Hower's testimony into support for its own flawed position are unavailing.⁸

In the context of the sanding issue, Staff raises the drawdown pressure at Shanghai, as well as Mr. Shipp's testimony on what IP believes is the real reason the sanding occurred. Staff Br. at 17. We leave for later Staff's criticisms of IP witnesses Messrs. Shipp and Hower. Here, we note that Staff's drawdown pressure argument is belied by the expertise that IP has both in-house and with Mr. Hower. *See* IP Ex. 3.6 at 17 & IP Ex. 5.2 at 7-10. Such expertise far outweighs Staff's conclusory assertions to the contrary. Furthermore, Staff uses information from only one period to imply that IP has changed its practices or that reduced gas volumes caused the sanding. If Staff had really wanted to understand the operations at the field, they would have sought and reviewed data from other years, including years when the inventory was lower (due, for example, to the casing leak) to see if the drawdown pressures were significantly different from past years. Staff, however, instead relies on isolated pieces of information to make sweeping conclusions.

Finally, Staff's continued insinuations that "something caused the sanding to take place for the first time in 33 years" (Staff Br. at 18) is akin to saying something caused me to take my car in to fix a burned out tail light—something in fact did cause both, but imprudence is not the answer in either case. As mechanical items age, they become more prone to developing issues. Staff's arguments to the contrary notwithstanding, not even a utility can prevent some things from happening (although in this case, once in 33 years is about as close to perfection as one can reasonably hope for). *See* IP Ex. 5.2 at 10.

⁸ Indeed, Staff provides no record citation for its key proposition on this point (because in fact there is no support for this proposition): "A means to retain deliverability at Shanghai under those circumstances is to pull harder on those wells without water production." Staff Br. at 18.

Staff's next issue relates to IP's failure to perform hysteresis plots at Shanghai for the last several years and its other efforts to monitor its storage fields. Staff Br. at 19-23. IP provided a thorough review of its position on the issue of hysteresis graphs and IP's above-the-norm efforts to monitor its fields in its Opening Brief (at 15-18), all of which directly undercut Staff's position.⁹ Rather than repeat those points here, we respond to a few novel points made by Staff. First, Staff asks rhetorically why IP did not produce the hysteresis graphs if they in fact showed nothing. Staff Br. at 20. Staff appears to have forgotten the DRs it asked and the responses it received. In response to a DR directed to Mr. Hower (Staff DR 2.200), IP provided several hysteresis graphs to Staff. If these had in fact shown anything (and they do not), Staff would have been the one to introduce them into the record. This failure to do so speaks louder than Staff's unsupported conclusions.¹⁰

In any event, Staff's rhetorical question ("[i]f the [hysteresis] graphs would show nothing, then why did IP not provide them to supports [sic] its viewpoint?" Staff Br. at 20) relies upon faulty logic and seeks to have parties burden the record with useless information. Staff could just as well asked if the alignment of the stars & planets would have shown nothing regarding Shanghai, then why did IP not provide astronomical charts to support its viewpoint. Evidence is about what the facts show and had the graphs at issue shown anything, Staff could

⁹ Staff's continued assertion that hysteresis plots are an "industry standard" is belied by Staff's own admissions that Staff does not know (1) whether all Illinois gas utilities make such plots, (2) whether all storage field operators in the United States make such plots, (3) of any Commission ruling relating to such plots. *See* IP Br. at 16. If such plots were an industry standard, one would expect that to be borne out by hard evidence (and not just Staff's repeated statements that it is so).

¹⁰ As we noted in our Opening Brief, IP also provided Mr. Lounsberry with the raw data to plot his own graphs yet he chose not to do so. IP Br. at 16. Any complaints by Staff that the data were not in an accessible format ring hollow given that IP provided the data on June 15, 2002 but Mr. Lounsberry did not inform IP of any problems with being able to open the diskette until August 23, 2002. Tr. 122-23.

have introduced them and explained what they showed instead of relying on faulty logic to imply otherwise.

There is thus not one shred of evidence (although Staff had all the data and even the plots themselves to contradict this) that plotting the hysteresis graphs for the years at issue would have shown anything, much less what Staff purports they would have shown. Nor is it apparent why Staff waited years to make these plots an issue. To paraphrase the Appellate Court: Staff failed to point out what relevant differences in circumstances existed between 2001 and the prior years (when Staff did not take issue with the failure to plot hysteresis graphs). *2000 Appellate Decision*, 790 N.E.2d at 387. Thus, there would have been no reason, based on past experience, for IP (or any other reasonable person) to have concluded that plotting hysteresis graphs was necessary as a part of prudent decision-making. *Id.*

Staff also raises late season well testing (Staff Br. at 21-22) and claims that IP should also have been performing these tests. Of course, even Staff admits that only “some operators” perform these tests. Staff’s argument thus devolves to an argument that because someone else is doing something, we should too—regardless of what else we might be doing that is in fact better than what those operators are doing. As Mr. Hower concludes:

... Illinois Power routinely collects pressure data in the gas bubble and in outlying observation wells during the operation of their storage fields. These data are analyzed using accepted industry methods to evaluate the performance of their fields. In addition, Illinois Power regularly conducts neutron logging programs in their aquifer fields *which, in my experience, exceeds what is done by most operators of aquifer storage fields elsewhere.* And, finally, Illinois Power has developed sophisticated reservoir simulation tools to assist them in evaluating and optimizing their Shanghai and Hillsboro storage fields. *Once again, this practice exceeds the level of effort and analysis followed by most operators of aquifer storage fields elsewhere.* The data collection and reservoir modeling effort that I have personally been involved in on the Hillsboro field over the last few years is unparalleled. *I have been involved in gas storage projects over the past ten years on three continents. I know of no other aquifer storage project in the world*

where so much time, technology and effort have been devoted to obtaining a better understanding of the reservoir performance.

IP Ex. 5.0 at 17-18 (emphasis added).

Staff did not look at the overall programs of IP and other storage field operators, but rather, chose to only identify one tool that some other storage field operators use to evaluate their storage fields. *See 2000 Appellate Decision*, 790 N.E.2d at 388 (looking at items in isolation was a flawed analysis). It is entirely plausible that these other storage field operators are not taking anywhere near the same level of actions from a total program level as those taken by IP (as Mr. Hower pointed out in his testimony, quoted above). Such a narrow view of the possible range of actions would be similar to saying that just because Staff does not employ PVRR analyses for every project, they are not able to evaluate any project.

Finally, and most remarkably, Staff raises for the first time in its Brief that IP has not completed its modeling of the Shanghai storage field. Staff essentially turns a proactive step IP has taken (and Staff knows full well the status of IP's modeling efforts due to DRs it asked and received responses to) into a negative. Staff does not even attempt to put a fig leaf over its claim by asserting that (1) this issue was ever raised in its rounds of pre-filed testimony or (2) it knows of any other storage field operator that is performing such modeling—because neither would be true. Staff did not present any evidence on this topic. Yet, it now attempts to create an issue where none exists. Its statement (that, had IP actually finished the modeling at Shanghai, it could have avoided the problems it encountered) is without record support (and indeed, Staff's Brief (at 23) is devoid of record citation on this point). Staff's complaint that this is one more example of IP not spending money on a technique that was available (Staff Br. at 23) is frivolous since the only witness to discuss this topic stated that IP's efforts on modeling *exceed the level of effort and analysis followed by most operators of aquifer storage fields elsewhere*. IP Ex. 5.0 at

18. Under Staff's argument, if Staff can think of (or more properly, can glean from a utility) any possible additional technique (even if it duplicates other techniques that are being used), then failure to use that technique becomes *a priori* evidence that the utility is imprudent for not using that technique should anything go wrong at that field. The standard for prudence is not so nonsensical. Finally, the burden is on Staff, not IP, when Staff chooses to raise a new issue—one it has chosen not to raise in similar past circumstances. *See, e.g., 2000 Appellate Decision*, 790 N.E.2d at 387.

Staff's arguments on each of its issues are not supported by the record. Indeed, it is difficult to understand why Staff seems so insistent on presenting only some of the facts rather than presenting a complete picture to the Commission and letting the Commission make a decision based on a full understanding of the evidence. Staff's overall conclusions (Staff Br. at 23-24) cannot survive. In any event, regardless of whether one gives any credence to Mr. Lounsberry's discredited ideas, under the standard for prudence (which recognizes that reasonable people can reach differing conclusions and neither be imprudent), IP's evidence demonstrates that its practices at Shanghai met the standard for prudence. Recognizing this (at least implicitly), Staff next raises IP's storage field practices generally in an attempt to bolster its case, to which we now turn.

General Storage Field Issues. As an initial matter, Staff admits that it "is not recommending an adjustment in this year's reconciliation" on these matters. Staff Br. at 24. This admission makes everything in that section of Staff's Brief irrelevant. Rather than move to strike the material, we merely note that, with this admission, nothing in section D(2) (pages 24-31) of Staff's Brief can properly form the basis of any disallowance in this case.

Staff begins by alleging that “[r]educing the peak day capacity of a storage field is an uncommon event” and professing to only know of one other such instance other than IP. Staff Br. at 24. Staff fails to realize that, based on data it collected (IP Ex. 3.10), the reduction of peak day expected deliverability is not as rare (nor as Mr. Hower discusses at length, IP Ex. 5.0 at 7-10 & IP Ex. 5.2 at 14-16, is such a reduction as unexpected) as Mr. Lounsberry would have this Commission believe. Indeed, it would seem that Mr. Lounsberry would want to confirm the facts prior to making these types of statements if he truly desired to show the facts to the Commission. Yet, he stated that he “did not review or rely upon this information [IP Ex. 3.10] in the development of his direct testimony.” Staff Ex. 5.00. To reach its contrary conclusion, Staff takes an answer by Mr. Hower out of context and then distorts what its own data shows.

Staff (Br. at 24-25) states that “IP claimed it was not aware of any storage field operator reducing the peak day capacity of its storage fields. (Tr., p. 31-32.)” In fact, what Mr. Hower was asked was “Are you aware of any storage field operator reducing the *rated* capacity of the field?” to which he answered “No.” Tr. 31-32 (emphasis added). Mr. Hower is not a regulatory expert but rather a technical gas storage field expert and thus would not necessarily be aware of reductions in rated storage field capacities. With respect to what he is an expert on, Mr. Hower very clearly stated “I am aware of numerous cases where the deliverability of a gas storage field has degraded and declined.” Tr. 31.

With respect to data collected by Staff, that data indicates that at least two companies had fluctuations in their peak day storage expected deliverability (Peoples & CIPS) in just the 6 years covered by the data. Although Staff belatedly sought to explain the reduction by CIPS as related to CIPS’ leased storage, nowhere in the explanation does CIPS or Staff explain why the leased storage values were fluctuating so frequently. See Staff Br. at 24-25.

Staff's "evidence" that reductions in peak day expected deliverability are rare is simply not credible. In fact, information in Staff's own possession shows at least 3 other reductions (Peoples, CIPS and the "historical one" that even Staff acknowledged, Staff Br. at 26), and all of those are apparently just in Illinois.

The next issue Staff raises relates to the level of supervisory staffing at the IP fields. Staff Br. at 26-27.¹¹ IP addressed these issues thoroughly in its Opening Brief (at 26-27). Rather than repeat those points here, suffice it to say that nothing in Staff's Brief undercuts the fact that IP's current staffing has "more than 200 years of gas storage service combined." IP Ex. 3.3 at 17. This along with the fact that storage field staff do not make reservoir decisions (they maintain the day-to-day operations), *see* IP Ex. 3.6 at 21, undercuts Staff's attempts to link IP's current management structure to the operational issues at Shanghai. As we have repeatedly explained, operational issues existed before the change in management structure and undoubtedly will arise in the future: humans are not perfect and the standard for prudence recognizes this fact.

Next, Staff contends that there has been an unacceptable reduction in IP's capital expenditures at its storage fields. Staff Br. at 27-28. But, Staff's whole analysis relies on an inapt comparison that seeks to compare current activity with activity from years that had very high levels of expenditures due to specific projects ongoing at that time. Staff's simplistic analysis makes no more sense than saying that the year I build my house is indicative of my capital needs in all future years. In any event, the numbers corrected to reflect the removal of the two projects were presented in IP Ex. 3.5:

¹¹ Although Staff refers to this as a manpower issue, it cannot be arguing that it is concerned with IP's level of operators because, as even it admits, that level "has remained stable since 1991" Staff Ex. 2.00 at 27. Thus, all that is left of Staff's concern is IP's level of supervisory staff.

	<u>Budgeted</u>	<u>Actual</u>
1997	\$1,054,900	\$1,206,600
1998	\$1,412,561	\$850,100
1999	\$1,061,800	\$762,900
2000	\$760,500	\$1,117,300
2001	\$1,007,500	\$1,492,200

A review of these numbers shows that IP's expenditures in recent years are *above* the average for the earlier years. Furthermore, IP spends what it needs to get the job done: in recent years, we have exceeded our budget when warranted. Staff's analysis is misleading for yet another reason. As a review of Revised Ex. 3.4 (Confidential) shows, much of the work at storage fields that is capitalized is work done above the ground, while much of the work on the wells themselves (e.g., chemical well treatments) is expensed. Thus, Staff's focus on capital expenditures is not completely apt. Finally, Staff never comes to grips with the several other points IP made in its Opening Brief based on the record evidence. IP Br. at 27-28.

Staff's next point relates to what it terms "identification of problems" but in reality relates to only a single incident at IP's Hillsboro storage field. Staff Br. at 29-30. Indeed, Staff's entire argument focuses on only a single item in IP's investigation of that one incident. *Id.* The best response to Staff's assertions is to paraphrase Staff's final paragraph on this point substituting Staff's own admitted error in this case:

[Checking the calculation of the percentage of gas misaccounted for due to the metering error] was a fairly basic starting point for [Staff to review] after [it began its analysis]. However, it took [IP's] prompting approximately [3] months after the fact for [Staff] to reach that basic point. [IP's] review of those events indicates that [Staff] failed to properly [analyze the issues it was raising]. The above exemplifies [Staff's] poor management oversight of its [analyses].

Staff Br. at 30 (based on Mr. Lounsberry's incorrect calculation brought out by IP at the hearing, *see* IP Br. at 19, n.13).¹² One error does not a pattern make, as even surely Staff should realize by now. In any event, the problem noted by Staff with respect to Hillsboro did not result in any adverse conclusions with regard to the incident.

The final issue Staff raises in its litany on this topic is the credibility of Mr. Shipp. Staff Br. at 30-31. Earlier in its Brief, it also attacked Mr. Hower's credibility. *Id.* at 25. Neither attack is warranted. First, Staff takes issue with the fact that IP (as it has traditionally done in the past) presented as its gas operations witness the person currently in a management role over those operations. Granted, Mr. Shipp's tenure in that role was relatively brief with respect to the reconciliation year at issue. But, as with any company, he was able to rely on the experience, training, expertise and institutional knowledge of those on his staff in presenting the Company's position in this case, as well as the records created and relied on by the Company in its business operations: he is after all a witness on behalf of the Company, not a witness appearing in his individual capacity. Indeed, reliance on the experience, training, expertise and institutional knowledge of their staffs is standard fare for managers in any company. As such, Staff's argument fails to recognize the vast wealth of knowledge that the Company brings to bear with its witnesses. Indeed, this is one of the reasons that testimony is pre-filed in Commission cases, permitting witnesses to gather the institutional knowledge needed to support their positions. It is also why data requests have any hope of being answered: the witness can gather facts from those who have direct knowledge. These last two facts are particularly apt here because Staff chose to

¹² Staff now has its arithmetic correct, Staff Br. at 14, n.5, but still gets the analysis wrong. The metering error occurred over a five-year period, not a one-year period. Therefore, a more apt comparison is 743,313 Mcf (the total for the five years of the metering error) divided by 18,000,000 Mcf (5 times the annual working gas at Shanghai) which is only about 4%. This is less than 1% per year, which is similar to amounts one could expect to lose from seepage. *See* IP Ex. 3.6 at 9.

wait until the hearing to attempt to strike Mr. Shipp's testimony and, as Staff admitted at the hearing, it had asked (and received responses to) 231 data requests (Tr. 100), and yet on many of the points covered by those data requests, it raised no issues at all.

The solution to Staff's new-found problem of needing a witness for every point a party wishes to make would be to have a multitude of witnesses, lengthening both the written record and the hearing time needed to bring a case through the evidentiary stage. However, the Company's (and the Commission's) traditional manner of presenting witnesses is a testament to the brevity of life. Indeed, Staff itself clearly does the same as IP as demonstrated by the fact that Mr. Lounsberry presented a note to Mr. Anderson as part of his belated explanation of the CIPS storage field reductions. *See* Staff Ex. 5.00 & Tr. 252. If Staff truly wishes to have a gaggle of witnesses presented, it should say something before the hearing and act in a manner consistent with its statements.

Staff appears to believe that Mr. Shipp was "its expert on gas storage field operations" Staff Br. at 31. While he was indeed IP's witness on IP's specific data and history, IP's expert on storage fields was Mr. Hower, a witness (as noted below) far more expert than Mr. Lounsberry. The fact is that Mr. Hower (and not Mr. Shipp) was the proper witness to ask about the technical details of chemical treatments and what various terms mean. IP also has on staff employees who can answer such technical questions but there seemed to be little point in clogging the record with yet another witness merely to have an in-house witness who could answer questions already within the expertise of Mr. Hower. Thus, the only "farce and ... disservice to the Commission" (Staff Br. at 31) is Staff's attempt to portray Mr. Shipp as a type of witness he was in fact not presented as.

Mr. Hower was the only expert witness in this case.¹³ And, he flatly disagreed with Mr. Lounsberry on just about every technical issue Mr. Lounsberry chose to raise. That Mr. Hower's opinions are more credible and should be accepted over Mr. Lounsberry's can be easily seen from the following comparison:

-- Mr. Hower is a licensed professional engineer; Mr. Lounsberry is not. *Compare* Tr. 64-65 *with* Tr. 92.

-- Mr. Hower has in fact helped draft and grade the test for professional engineers; the record indicates no such experience by Mr. Lounsberry. Tr. 65.

-- Mr. Hower co-wrote one of the texts that Mr. Lounsberry referred to in his testimony. Mr. Lounsberry, on the other hand, misunderstood that reference work. *See* IP Ex. 5.0 at 19.

-- Mr. Hower has been in the business for over 20 years, has worked on storage fields on 3 continents and has written several publications on these topics. *See* IP Exs. 5.0 at 18 & 5.1. Mr. Lounsberry has never worked at a facility that operates or performs maintenance for gas storage fields and has never published any professional articles or references on the topics involved in this case. Tr. 92.

Given the above, Staff's decision to attack Mr. Shipp is understandable but unavailing since the (only) expert in this case was Mr. Hower. Mr. Shipp was in the same position as many

¹³ Staff's complaint about the fees paid to Mr. Hower (Staff Br. at 25) is frivolous. Leaving aside that every witness in a case such as this (including Mr. Lounsberry & Ms. Jones) is paid for his or her time and talents, Staff totally ignores the fact that the \$50-100,000 Mr. Hower has received from IP over a ten-year period pales in comparison to the millions of dollars he has received from others over that period. Tr. 63. The fees paid by IP to Mr. Hower over this period represented "a small amount," on the order of one or two percent of the total fees his company has received for his work. *Id.* It thus strains credulity to believe that Mr. Hower would distort his views on the topics involved in this case in order to keep in IP's good graces at the risk of his reputation and ability to testify honestly and truthfully in other proceedings or at the risk of being able to continue working for far more significant clients.

other witnesses in terms of gathering information and presenting the position of a party, including Staff in this case.

In sum, regardless of whether one looks at Shanghai or IP's storage field operations generally, "[i]t would be difficult to identify other gas storage operators that meet or exceed the standard set by Illinois Power in the data collection, analysis, and management for their storage fields." IP Ex. 5.2 at 14. And, even if one were to find some reason to credit Mr. Lounsberry's conclusions to the contrary, the standard for prudence (which recognizes disagreements among reasonable people) means that IP has demonstrated its prudence in this case. Again, it is difficult to understand why Staff seems so insistent on presenting only some of the facts rather than presenting a complete picture to the Commission and letting the Commission make a decision based on a full understanding of the evidence. Indeed, in light of the numerous problems that run throughout Staff's presentation of its case, "[t]he Commission should [to paraphrase Staff] take this opportunity to send [Staff] a clear message to alter its behavior and devote more attention to its [analyses]." Staff Br. at 31.

V. The Late Payment Interest in This Case Is Indistinguishable from Other Interest Allowed by the Staff in a Prior IP PGA Reconciliation.

The final issue Staff raises is the fact that, in 2001, IP incurred an immaterial amount of late payment interest charges to pipelines. *See* Staff Br. at 32-33. Nothing in Staff's Brief, however, undercuts the points made by IP in its Opening Brief (at 28-30). Essentially, Staff persists in its position that IP should be "penalized" (Staff Br. at 33) even for inadvertent, immaterial errors. This attempt to impose perfection improperly changes the standard for prudence to one that no party (including Staff) could ever hope to achieve.

There is nothing in the record that IP's imperfections are anything but immaterial. Indeed, the record evidence (which also undercuts any claim that IP routinely uses late payments

as a financing mechanism, Staff Br. at 33) is that, over the years 1999-2001, IP incurred only \$1,806 in late payment charges on gas invoices while over that same period it had total PGA charges of \$735,258,924. IP Ex. 1.10 at 3. Such immaterial amounts should not be found imprudent given the standard for prudence.

Furthermore, Staff has not demonstrated why 2001 was different from the past time when Staff did not take issue with interest charges flowing through the PGA clauses. There was thus no reason, based on past experience, that IP (or any other reasonable person) would have concluded that interest could not have been included as a proper cost.

The immaterial amount of interest at issue in this case should not be disallowed in light of the reasons provided above.

VI. The Parties Are in Agreement that IP Should Recover Amounts Due to an Error in the Way Donated Services were Handled.

In its Second Verified Motion to Reopen the Record and Admit Additional Evidence, IP explained an accounting error that had only recently been discovered. This Motion was granted on May 28, 2003. As a part of the process on reopening, additional testimony and exhibits were entered into the record on behalf of IP (IP Exs. 1.12-1.15) and Staff (Staff Ex. 6.00 and accompanying Schedules 6.01 & 6.02). This additional evidence demonstrates that IP should recover an additional \$2,534,240 from its PGA customers with respect to the 2001 reconciliation year.

The reason for the recovery is an error relating to how the cost of gas supplied to donated service customers is handled in the PGA calculation and how it is reported in IP's Customer Connect System ("CCS"). Some background will help explain this issue. Pursuant to 83 Ill. Admin. Code § 525.40, IP is allowed to recover certain gas costs. However, gas utilities must "exclude [from recoverable gas costs] the estimated cost of gas to be used by the utility,"

§ 525.40(b), which is defined, *inter alia*, to include “gas furnished to municipalities or other governmental authorities without reimbursement in compliance with franchise, ordinance or similar requirements.” § 525.20. IP discovered an accounting error relating to its donated service customers, *e.g.*, customers who receive gas without reimbursement in compliance with franchise requirements. *See* IP Ex. 1.12 at 1-2.

When calculating the PGA, IP deducts total donated service from total gas costs. The result is then compared to total PGA revenue in determining the monthly over- or under-recovery amount. However, the method of reducing gas costs for donated service is correct only if PGA revenue also excludes the PGA revenue associated with donated service customers (thereby ensuring PGA customers do not pay for donated gas). Although the service is donated (*i.e.*, ultimately nets to zero for IP and the customer is not charged), within CCS, it is accounted for as PGA revenue for that service as if the customer were a PGA customer, but then the revenue reversal is accounted for as a non-PGA part of CCS. The PGA revenue report used in the PGA calculation includes donated service revenue but not the revenue reversal for donated services. Therefore, total PGA revenue includes donated service; however, PGA gas costs have been reduced for donated service. IP’s PGA calculation was therefore in error—showing a greater excess of PGA revenues over recoverable costs than it should have—and caused IP to incorrectly refund \$2,534,240 to PGA customers during 2001. *See* IP Ex. 1.12 at 2-3.

In its Direct Testimony on Reopening, Staff agreed that the error had occurred and with the Company’s method for correcting it. *See* Staff Ex. 6.00 at 4-5.¹⁴ Thus, there is no dispute on

¹⁴ Staff also presented revised Schedules to show the effect of reversing the proposed FPP disallowance and correcting the donated services error. IP does not disagree with the Staff schedules with respect to those two revisions. IP continues to dispute the remaining proposed disallowances that are reflected in Staff Ex. 6.00 (Schedules 6.01 & 6.02), which are discussed in Sections III, IV & V of this Reply Brief.

this issue. IP should recover the money it incorrectly refunded to PGA customers during 2001. IP should be allowed to recover the additional \$2,534,240 through Factor O.

CONCLUSION

In sum, no disallowances are justified for Illinois Power's 2001 reconciliation period of PGA revenues to cost actually and prudently incurred. Staff's attempts to paint IP's actions and practices as imprudent do not survive scrutiny. Indeed, Staff continues to make the same types of arguments that led to the reversible error in the *2000 Appellate Decision*, albeit with respect to different issues. In any event, the parties are in agreement that no disallowance is now warranted with respect to FPP and that IP should recover the amounts presented in the record related to the donated services issue. IP's revised reconciliation statement as presented on IP Exhibit 1.13 should be approved by the Commission.

Respectfully submitted,

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Dated: September 17, 2003

CERTIFICATE OF SERVICE

I, Joseph L. Lakshmanan, certify that on the _____ day of September, 2003, I served electronically, a copy of Illinois Power Company's Reply Brief on the individuals on the service list attached.

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